

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A.No. 29(C)/2009-10**

(From the order of the Id.DCST (Appeal), Sambalpur Range,  
Sambalpur, in Appeal No. AA.170/SAII/CST/07-08,  
dtd. 04.07.2009, modifying the assessment order  
of the Assessing Officer)

**Present: Sri S. Mohanty  
2<sup>nd</sup> Judicial Member**

M/s. Modern Dealer,  
Dist. Bargarh.

.... Appellant

**-Versus-**

State of Odisha represented by the  
Commissioner of Sales Tax,  
Orissa, Cuttack.

.... Respondent

For the Appellant : None

For the Respondent : Mr. M.L. Agarwal, Standing Counsel.

(Assessment Year : 2003-04)

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Date of Hearing: 07.03.2019 \*\*\* Date of Order: 07.03.2019

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**ORDER**

The only question raised for decision in this appeal preferred by the dealer is, if the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in short, FAA/DCST) has committed wrong in not allowing the dealer to rectify the mistake crept in E-II Form. Here, the dealer as the appellant challenged the order of learned FAA in an assessment u/s.12(5) of the Central Sales Tax (Orissa) Rules, 1957 (in short, CST(O) Rules) for the assessment period 2003-04.

2. The Sales Tax Officer/Assessing Authority, Bargarh Circle, Bargarh (in short, STO/AA) during the assessment year, found the dealer has purchased goods to the tune of Rs.17,87,988.54 and sold goods worth of Rs.22,98,335/- in course of inter-state trade under Rule 6(2) of the CST(O) Rule. The dealer could furnish E-I Form in support of sale amount of Rs.6,05,883/- and declaration in Form 'C' for an amount of Rs.22,98,335/-. As the dealer could not produce E-I Form in support of his purchase, the AA disallowed the same and added it to taxable group at 4% i.e. on the amount of Rs.16,92,497/-. In ultimate calculation, the GTO of the dealer determined at Rs.22,98,335/-. On furnishing of E-I Form and declaration Form 'C', deduction of Rs.6,05,883/- was allowed. Resultantly, the TTO was determined at Rs.16,92,497/-. Tax on it determined at Rs.67,700/- and the dealer having paid no tax, the entire amount was raised against him as tax due.

3. In appeal before the FAA, the Id.DCST (Appeal) as FAA, re-determined the TTO on acceptance of the declaration Form E-II to the tune of Rs.15,95,502/-. As a result, the tax due reduced to Rs.28,113/-.

4. Felt aggrieved, the dealer preferred this appeal contending *inter alia* that, he had produced three numbers of E-II Forms before the learned FAA. The FAA accepted two out of three Forms and rejected the one, as it was not duly filled. The learned FAA has not provided an opportunity to rectify the mistake crept in the E-II Form. So, the impugned order needs to be set-aside by giving an opportunity to the dealer for making correction in the E-II Form furnished before the FAA.

5. The dealer had submitted written argument in support of his claim and placed reliance in the matters of **State of Orissa**

**Vrs. Orissa Polish Works, (1970) Vol.36 Page 480 and Easun Engineering Company Ltd. Vrs. The Joint Commercial Tax Officer, Esplanade Division-I, Madras-I & Another (1970) Vol.36 Page 486 and J.J. Spineers Ltd. Vrs. Commissioner of Commercial Taxes, Orissa & Others (1997) Vol.109, Page 289.**

The reported decisions relied by the dealer laid by the principle to be adopted while extending the principle of natural justice and in accordance to that, it is held that, there is no obstacle under law for the dealer to furnish the declaration form even at the appellate stage. The only question is, the declaration form furnished is not filled properly and the dealer wants an opportunity to rectify the same. For the said purpose, the original should be returned to the dealer to make it corrected from the issuing dealer. In consideration of the facts above, I am of the view that, the dealer should be provided an opportunity to rectify the mistake in the form unless, the determination of tax liability by the FAA should be confirmed and realised from the dealer. Accordingly, it is ordered.

The appeal is allowed. The matter is remitted back to the FAA for the limited purpose of giving an opportunity to the dealer to rectify the defective Form E-II within a reasonable time. In the event, the dealer could rectify the mistake, the FAA will re-compute the tax liability unless, the tax liability already fixed, is to be re-imposed on the dealer.

Dictated and Corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

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(S. Mohanty)  
2<sup>nd</sup> Judicial Member

